

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NELSON NICOLAS NUNEZ-
ACOSTA,

Defendant.

4:18-CR-3058

ORDER

The defendant has filed a motion ([filing 173](#)) to reduce his sentence pursuant to [18 U.S.C. § 3582\(c\)\(1\)\(A\)](#). The Court will deny that motion.

Pursuant to § 3582(c)(1)(A), a defendant may (after exhausting his administrative remedies) move for reduction of his term of imprisonment based upon "extraordinary and compelling reasons." The Court, after considering the factors enumerated in [18 U.S.C. § 3553\(a\)](#), may grant the motion if extraordinary and compelling reasons warrant the reduction, and such a reduction is consistent with applicable policy statements issued by the Sentencing Commission. § 3582(c)(1)(A). And pursuant to [U.S.S.G. § 1B1.13\(a\)\(2\)](#), the Court must also find that the defendant is not a danger to the safety of any other person or to the community.

The "extraordinary and compelling" basis for a sentence reduction offered by the defendant is COVID-19. [Filing 174](#). He has identified several health conditions that, he says, increase his risk of developing serious COVID-19 disease. [Filing 174 at 4](#). He also argues that the conditions of his incarceration have been harsher because of the pandemic.

But the defendant's allegations don't satisfy § 1B1.13(b)(1)(D): He doesn't allege an ongoing outbreak of infectious disease at his facility, nor is

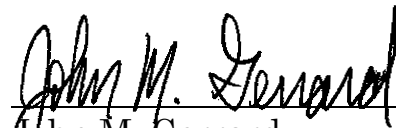
there a declared public health emergency. *See* National Emergencies Act, [Pub. L. 118-3](#), 137 Stat 6 (2023). While he claims an outbreak shortly before his motion was filed, the Court is not persuaded that even 21 positive tests at FCI Fort Dix, *see* [filing 174 at 6](#), out of approximately 4,000 total inmates, is the sort of "ongoing outbreak" that § 1B1.13(b)(1)(D) was meant to address.¹ And the defendant's broader argument that the COVID-19 pandemic has made his incarceration harsher, [filing 174 at 11-12](#), doesn't hold up either: It broadly describes the experience of all federal prisoners, so even if it was "compelling," it's hardly "extraordinary." *See* § 3582(c)(1)(A).

Having concluded that the defendant hasn't alleged an extraordinary and compelling reason for a sentence reduction, the Court need not consider the defendant's remaining arguments. *See* § 1B.1.13(d). To the extent that the defendant's complaints concern the conditions of his confinement, *see* [filing 174 at 5-11](#), his remedy is 28 U.S.C. § 2241, not § 3582(c)(1)(A).

IT IS ORDERED that the defendant's motion for compassionate release ([filing 173](#)) is denied.

Dated this 8th day of July, 2024.

BY THE COURT:



John M. Gerrard
Senior United States District Judge

¹ Nor does there appear to be a current basis for such an allegation. *See* Bureau of Prisons, *Inmate COVID-19 Data*, https://www.bop.gov/about/statistics/statistics_inmate_covid19.jsp (last updated July 3, 2024).